complaint

Mr S complains that Gain Credit LLC (trading as Lending Stream) gave him loans that he couldn't afford to repay.

background

Mr S was given 34 loans by Lending Stream between October 2012 and April 2017. Mr S's first loan was repayable in five monthly instalments. The rest of his loans were repayable in six monthly instalments. But most of the time Mr S repaid his loans early – often within a few days of taking them out. All his loans have been fully repaid. A summary of his borrowing from Lending Stream is shown in an appendix to this decision.

When Mr S first complained to Lending Stream it noted that it hadn't recorded his expenditure on one of the loans. So, since it couldn't be sure the loan was affordable, it offered to refund the interest he'd paid on that loan. But it didn't think it had done anything wrong on the remaining loans. Mr S didn't accept that offer and brought his complaint to this Service.

One of our adjudicators has assessed Mr S's complaint. He thought that the checks Lending Stream did were sufficient for the first four loans. But he thought Lending Stream should have done more checks before the remaining loans. He thought though that the checks before loans 2 to 4 didn't show the loans were sustainably affordable. And he thought that better checks on the rest of the loans would have shown all except five of them were unaffordable. So he asked Lending Stream to pay some compensation to Mr S.

Lending Stream didn't agree with the adjudicator's assessment. So it has asked that the complaint be decided by an ombudsman.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've also taken into account the law, any relevant regulatory rules and good industry practice at the time the loans were offered.

Lending Stream was required to lend responsibly. It needed to make checks to see whether Mr S could afford to pay back each loan before it lent to him. Those checks needed to be proportionate to things such as the amount Mr S was borrowing, and his lending history, but there was no set list of checks Lending Stream had to do.

The first four loans were given when Lending Stream was regulated by The Office of Fair Trading (OFT). Its guidance was clear about the responsibility of the lender to take reasonable steps to ensure that a borrower could *sustainably* repay their loans. The OFT's Irresponsible Lending Guidance states *"Assessing affordability is a borrower-focussed test which involves a creditor assessing a borrower's ability to undertake a specific credit commitment, or specific additional credit commitment, in a sustainable manner, without the borrower incurring (further) financial difficulties."*

The guidance goes on to say that repaying credit in a sustainable manner means being able to repay credit *"out of income and/or available savings"* and without *"undue difficulty."* And it defines *"undue difficulty"* as being able to repay credit *"while also meeting other debt repayments and normal/reasonable outgoings"* and *"without having to borrow further to meet these repayments"*

The Financial Conduct Authority was the regulator at the time Mr S took the rest of his loans from Lending Stream. Its regulations for lenders are set out in its consumer credit sourcebook (generally referred to as "CONC"). These regulations – in CONC 5.3.1(2) - require lenders to take "*reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences."* CONC 5.3.1(7) defines 'sustainable' as being able to make repayments without undue difficulty. And explains that this means borrowers should be able to make their repayments on time and out of their income and savings without having to borrow to meet these repayments.

So, the fact that the amounts borrowed and the repayments might have been low in comparison with Mr S's income, or that he managed to repay them in full and on time (or early), doesn't necessarily mean the loans were affordable for him and that he managed to repay them in *a sustainable manner.* In other words I can't assume that because Mr S managed to repay his loans that he was able to do so out of his normal means without having to borrow further.

Lending Stream has shown us the checks it did before lending to Mr S. Before each loan it asked him about his income, and his normal monthly expenditure. And it checked his credit score before each loan too.

At the outset I would say that the way Mr S borrowed from Lending Stream was unusual. The loans were designed to be repaid over several months. But after the first loan Mr S rarely let his loans run for more than a month. And on around half the loans he repaid them within a week. I don't think this behaviour should have given Lending Stream any comfort about the stability of Mr S's finances.

Because each of the loans was repayable in instalments, the monthly payments Mr S was contracted to make were much smaller – the highest instalments he ever needed to pay were just over £200. But of course Mr S was giving a commitment to Lending Stream to make his payments over an extended period.

I think that the checks Lending Stream did on the first four loans were proportionate. As time went on I think the lender's concerns about the frequency of Mr S's borrowing should have increased. But given the size of the repayments he needed to make on each of the loans I think it was reasonable for Lending Stream to base its assessment on the income and expenditure information that Mr S had provided.

But the information Mr S provided before taking loans 2 to 4 showed that he had £200 left over each month that he could use to make his repayments. The highest instalment he needed to pay on each loan was around £108 – and that had to be made as long as two months after he'd taken the loan. So I don't think it was reasonable for Lending Stream to conclude that these repayments were sustainable for Mr S. There only needed to be a small fluctuation in his finances to render him unable to meet the repayments. So I don't think Lending Stream should have given Mr S loans 2 to 4.

There was then a gap of almost five months before Mr S asked for another loan. So although it still needed to be mindful of Mr S's borrowing history I think Lending Stream could have assumed a degree of stability in Mr S's finances. So I think the checks it did before this loan were also proportionate. And the disposable income that Mr S now declared was much larger than before. So I don't think Lending Stream was wrong to give this loan to Mr S.

Mr S repaid that loan within two days. And then, a couple of months later he asked for another loan – this was the largest loan he'd taken from Lending Stream. I think by this stage Lending Stream should have realised that there were some issues with Mr S's financial situation and that it couldn't rely on the information he was providing. I think that it should have taken steps to independently check his finances.

And from then on the frequency of Mr S's borrowing from Lending Stream increased. He would often repay his loans and take a new loan within a few weeks. And on three occasions he took new loans before he'd repaid a previous one. I accept that there were a few longer gaps in Mr S's borrowing. But I think by that time a pattern had been clearly established. I think Lending Stream should have been independently verifying Mr S's finances from this point onwards.

But although I don't think the checks Lending Stream did from loan 6 onwards were sufficient, that in itself doesn't mean that Mr S's complaint should succeed. I'd also need to be persuaded that what I consider to be proportionate checks would have shown Lending Stream that Mr S couldn't sustainably afford the loans. So I've looked at Mr S's bank statements, and what he's told us about his financial situation, to see what better checks would have shown Lending Stream.

It is clear, over the time he was borrowing from Lending Stream, that Mr S's income varied greatly. Some months he received more income than he'd declared to the lender. But others he received much less, or even none, and relied on benefit payments. And there doesn't seem to be much pattern to those income fluctuations. Independently reviewing Mr S's income wouldn't have given Lending Stream much confidence that he'd be able to meet his repayments at any given time – and even less so given that the loan agreements each ran for six months.

Mr S's bank statements don't show much in the way of normal living costs. They show some rent being paid – although Mr S has explained this was often paid in cash. And they show some other costs such as mobile phone bills and insurance payments. But what they do show is that Mr S was heavily reliant on borrowing from friends and family members. He also began to borrow from other short term lenders as time went on. And towards the latter stages of his relationship with Lending Stream he made what appear to be a significant number of gambling transactions.

There was a short period when Mr S's finances were more stable – around March and April 2015. And that is reflected in the fact that Mr S then didn't borrow again from Lending Stream until October 2015. And so I think it reasonable to say that the loans Mr S took in those months were affordable for him.

But other than that, the fluctuations in Mr S's income, the amount of debt he had to friends and other family members, the amount he appears to have been gambling, and the other debt repayments he was committed to make meant that he had no disposable income each month. If Lending Stream had done what I consider to be proportionate checks it would have seen the problems with Mr S's financial situation. And so, as a responsible lender, it wouldn't have agreed to lend to him at those times. So Lending Stream needs to pay Mr S some compensation.

putting things right

I don't think Lending Stream should have agreed to give Mr S loans 2 to 4, loans 6 to 11, or loans 16 to 34. So for each of those loans Lending Stream should;

- Refund any interest and charges applied to the loans.
- Add simple interest at a rate of 8% per annum to each of these amounts from the date they were paid to the date of settlement*.
- Remove any adverse information recorded on Mr S's credit file in relation to the loans.

*HM Revenue & Customs requires Lending Stream to take off tax from this interest. Lending Stream must give Mr S a certificate showing how much tax it's taken off if he asks for one.

my final decision

My final decision is that I partly uphold Mr S's complaint and direct Gain Credit LLC to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 13 March 2018.

Paul Reilly
ombudsman

Appendix – Summary of Mr S's Borrowing from Lending Stream

Loan Number	Borrowing Date	Repayment Date	Loan Amount
1	15/10/2012	08/03/2013	£ 165
2	29/08/2013	18/09/2013	£ 200
3	28/09/2013	30/09/2013	£ 200
4	16/11/2013	07/12/2013	£ 200
5	06/05/2014	08/05/2014	£ 300
6	26/07/2014	17/08/2014	£ 400
7	27/08/2014	12/09/2014	£ 200
8	03/10/2014	26/11/2014	£ 200
9	14/10/2014	24/11/2014	£ 110
10	27/12/2014	12/02/2015	£ 200
11	27/02/2015	27/02/2015	£ 60
12	18/03/2015	19/03/2015	£ 200
13	28/03/2015	31/03/2015	£ 300
14	04/04/2015	09/04/2015	£ 50
15	26/04/2015	12/05/2015	£ 210
16	10/10/2015	16/10/2015	£ 400
17	19/11/2015	19/11/2015	£ 200
18	31/12/2015	17/01/2016	£ 200
19	15/02/2016	19/02/2016	£ 200
20	28/02/2016	29/02/2016	£ 400
21	06/03/2016	18/03/2016	£ 300
22	11/03/2016	12/03/2016	£ 200
23	18/04/2016	20/04/2016	£ 200
24	08/05/2016	20/05/2016	£ 200
25	16/05/2016	20/05/2016	£ 100
26	11/06/2016	20/06/2016	£ 200
27	14/07/2016	15/07/2016	£ 200
28	30/07/2016	19/08/2016	£ 300
29	06/09/2016	20/09/2016	£ 280
30	25/10/2016	18/11/2016	£ 250
31	18/01/2017	20/01/2017	£ 300
32	04/02/2017	20/02/2017	£ 300
33	18/03/2017	20/03/2017	£ 250
34	19/04/2017	20/04/2017	£ 200